

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ruth Lerdahl	Team: Team # 4	CCRB Case #: 201000737	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sat, 01/16/2010 7:30 PM	Location of Incident: [REDACTED]	Precinct: 25	18 Mo. SOL 07/16/2011	EO SOL 7/16/2011	
Date/Time CV Reported Sat, 01/16/2010 9:56 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 01/16/2010 9:56 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Theohari Koumniotes	15817	[REDACTED]	MN IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Miguel Rosa	18369	[REDACTED]	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A. POM Theohari Koumniotes	Abuse of Authority: PO Theohari Koumniotes stopped § 87(2)(b) [REDACTED]	[REDACTED]
B. POM Theohari Koumniotes	Abuse of Authority: PO Theohari Koumniotes searched § 87(2)(b) [REDACTED]	[REDACTED]
C. POM Theohari Koumniotes	Discourtesy: PO Theohari Koumniotes spoke rudely to § 87(2)(b) [REDACTED]	[REDACTED]
D. POM Theohari Koumniotes	Off. Language: PO Theohari Koumniotes made remarks to § 87(2)(b) [REDACTED] based upon race.	[REDACTED]
E. POM Theohari Koumniotes	Force: PO Theohari Koumniotes used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On January 16, 2010 § 87(2)(b) made complaints about the following incident to both IAB and the CCRB. On January 16, 2010 § 87(2)(b) encountered officers in the elevator of his building at § 87(2)(b). The following allegations resulted from the officers' actions:

- **Allegation A: Abuse of Authority – PO Theohari Koumniotes stopped** § 87(2)(b)
- **Allegation B: Abuse of Authority – PO Theohari Koumniotes searched** § 87(2)(b)
§ 87(2)(g)
- **Allegation C: Discourtesy – PO Theohari Koumniotes spoke rudely to** § 87(2)(b)
- **Allegation D: Offensive Language – PO Koumniotes made remarks to** § 87(2)(b)
based upon race. § 87(2)(g)
- **Allegation E: Force – PO Theohari Koumniotes used physical force against** § 87(2)(b)
§ 87(2)(g)

§ 87(2)(b) is suing the city and sought medical treatment for injuries related to this incident. This case was originally assigned to Inv. Howell, was reassigned to Inv. Barto in April 2010, and was reassigned to the undersigned in July 2010.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) made four statements about this incident: his initial complaint to CCRB (encl. [3A-B]) and his complaint to IAB on January 16, 2010 (encl. [2]), a detailed phone statement on January 22, 2010 (encl. [4A-B]), and his CCRB interview on May 5, 2010 (encl. [5A-F]). On January 16, 2010, at approximately 7:15 p.m. § 87(2)(b) was in his building at § 87(2)(b). He got in his elevator to go to the § 87(2)(b). When the elevator stopped at his floor, four uniformed officers were inside. Two of these officers have been identified through this investigation as PO Theohari Koumniotes and PO Miguel Rosa of Manhattan North IRT. The other two officers were white males in uniform, but § 87(2)(b) was unable to provide a more detailed description of them. § 87(2)(b) entered the elevator. PO Koumniotes asked § 87(2)(b) where he was going and if he had identification. § 87(2)(b) did not respond.

The officers were stopping on every floor and getting out. § 87(2)(b) remarked that the way the officers were conducting the vertical patrol was not how they usually did it. § 87(2)(b) tried to exit the elevator because he did not want to wait at every floor, but PO Koumniotes blocked his way. PO Koumniotes asked § 87(2)(b) if he had identification, and § 87(2)(b) said he did but did not provide it. PO Koumniotes asked if he lived in the building, and § 87(2)(b) did not respond. § 87(2)(b) told PO Koumniotes that he was speaking to him disrespectfully. While

still in the elevator, PO Koumniotes handcuffed § 87(2)(b) PO Koumniotes removed § 87(2)(b)'s wallet and some loose cash from his pocket, and replaced the cash in his pocket and removed his identification.

The officers escorted § 87(2)(b) off the elevator to his apartment, where his mother, Ann § 87(2)(b) verified that he lived there. The officers took § 87(2)(b) down three flights of stairs to the 6th Floor. PO Koumniotes stated “what is a grown mother fucking man your age doing living with his mother?” § 87(2)(b) stated that PO Koumniotes stopped calling him a “nigger” and a “black motherfucker” and started addressing him as § 87(2)(b) when other civilians walked by. He § 87(2)(g)

§ 87(2)(b) did not say in what context these statements were made. § 87(2)(b) did not allege the discourteous or offensive language in any of his other statements. § 87(2)(b) was standing against the wall, and PO Koumniotes pushed him twice on his chest against the wall. § 87(2)(b) believed this was meant to provoke him since he had not been moving around and the officer did not issue him any instructions to get against the wall. PO Koumniotes issued § 87(2)(b) two summonses for disorderly conduct. In response, § 87(2)(b) said, “This is bullshit,” and PO Koumniotes accused § 87(2)(b) of calling him a “cracker.”

Attempts to Contact Complainant/Victim

The CCRB sent § 87(2)(b) one letter and called him three times in September, 2010 and left messages with § 87(2)(b) in order to schedule a photo viewing. To date, § 87(2)(b) has made no attempts to contact the CCRB.

NYPD Statements:

Subject Officer: PO THEOHARI KOUMNIOTES

- § 87(2)(b)
- *On the date of incident, assigned to Manhattan North IRT, mobile response. He worked from 4:00 p.m. to 12:35 a.m. with PO Miguel Rosa, dressed in uniform, and was assigned to a marked van.*

Memo Book and Summons

PO Koumniotes' memo book states that § 87(2)(b) cursed and screamed on the elevator and refused to exit the elevator (encl. [6A-C]). He issued § 87(2)(b) two summonses for disorderly conduct (encl. [7A-B]). On the back of the summonses, he wrote that § 87(2)(b) stated, “You fucking crackers,” and “Don’t fucking touch me.”

CCRB Testimony

PO Koumniotes was interviewed at the CCRB on August 26, 2010 (encl. [8A-B]). On January 16, 2010 at approximately 7:30 p.m. PO Koumniotes and PO Rosa did a vertical patrol of § 87(2)(b). § 87(2)(b) entered the elevator. They went up the elevator and on each floor, one of the officers got out to check the landing. After doing this for several floors, § 87(2)(b) said to the officers, “If you want to make your fucking rounds, you can get off the elevator and walk.” PO Koumniotes told § 87(2)(b) that if he did not like the situation he could use the other elevators. § 87(2)(b) said he went to the community meetings once a month and knew his rights, and that the officers were “fucking wasting [his] time.”

PO Koumniotes asked § 87(2)(b) if he lived in the building and § 87(2)(b) refused to answer. PO Koumniotes told § 87(2)(b) several times to step off the elevator and he refused, raised his voice and cursed at the officers. PO Koumniotes grabbed § 87(2)(b)'s arm and pulled

him off the elevator onto the landing. § 87(2)(b) refused to give PO Koumniotes his identification, and flailed his arms in order to prevent PO Koumniotes from getting his identification or getting anywhere close to him. PO Koumniotes also felt that § 87(2)(b) was a threat to him by the way he was waving his hands. For this reason, PO Koumniotes handcuffed him. PO Koumniotes did not push § 87(2)(b) against the wall. PO Koumniotes frisked § 87(2)(b) and felt a wallet in his pocket. PO Koumniotes pulled out the wallet and retrieved § 87(2)(b)'s identification, but it did not have his address. PO Koumniotes told § 87(2)(b) he could either tell him where he lived or go to jail. § 87(2)(b) called PO Koumniotes a "racist white cracker" and said he lived on the third floor. PO Koumniotes did not call § 87(2)(b) a "nigger" or a "black motherfucker" and did not hear any other officers say that. PO Koumniotes and PO Rosa brought § 87(2)(b) to the third floor and his mother, § 87(2)(b) answered and verified he lived there.

Witness Officer: PO MIGUEL ROSA

- § 87(2)(b)
- *On the date of incident, assigned to Manhattan North IRT, mobile response. He worked in uniform from 4:00 p.m. to 12:35 a.m. with PO Koumniotes, dressed in uniform and was assigned to a marked van.*

CCRB Testimony

PO Rosa was interviewed at the CCRB on September 14, 2010 (encl. [10A-B]). He stated that while doing a vertical patrol with PO Koumniotes, § 87(2)(b) entered the elevator. Either PO Rosa or PO Koumniotes asked § 87(2)(b) if he lived in the building. The officers initiated the interaction with § 87(2)(b) did not respond and "mouthed off" to the officers. The officers took § 87(2)(b) out of the elevator for their safety and went to his apartment door and verified that he lived there. PO Rosa did not recall PO Koumniotes handcuffing § 87(2)(b) checking his identification, frisking or searching him, or pushing him against a wall. He did not recall § 87(2)(b) being physically uncooperative at any point, although he was verbally uncooperative throughout. He denied the discourtesy and offensive language allegations.

Officers Not Interviewed

The only description § 87(2)(b) was able to provide of the other two officers present was that they were white males in uniform, numerous officers fitting such a description were working, and neither PO Koumniotes nor PO Rosa remembered other officers being present. According to the roll call, no other officers were assigned to the area. Nevertheless, the CCRB attempted to contact § 87(2)(b) to schedule a photo array, but he did not respond. Therefore, these officers were not identified. In addition, CCRB determined that interviewing additional officers would not affect the disposition of the allegations.

NYPD Documents

Roll Call, Manhattan North IRT, Tour 3

No additional officers were assigned to work with PO Koumniotes and none were assigned to the area (encl. [12A-E]).

Medical Records

§ 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) (encl. [5A-C]). He complained of left shoulder and lower back pain after an officer pushed him against the wall in his building. He was diagnosed with musculoskeletal pain and given Motrin.

Summons for Incident and Disposition

According to Manhattan Criminal Summonses, both summonses issued to § 87(2)(b) were dismissed.

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on April 1, 2010. The monetary amount was not listed (encl. [6A-C]).

Civilian Criminal History

- As of September 28, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b).

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. [1D]).

Subject Officer CCRB History

- PO Theohari Koumniotes has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. [1B-C]).

Conclusion

Identification of Subject Officer

- PO Koumniotes acknowledged interacting with § 87(2)(b).

Investigative Findings and Recommendations

Allegation A: Abuse of Authority – PO Theohari Koumniotes stopped § 87(2)(b)

§ 87(2)(b) PO Koumniotes, and PO Rosa all stated that § 87(2)(b) became angry when the officers spoke to him and refused to tell them whether he lived in the building. § 87(2)(b) acknowledged that he was annoyed the elevator kept stopping, PO Koumniotes wrote comments about § 87(2)(b)'s behavior on the summonses and in his memo book, and § 87(2)(b) acknowledged being uncooperative. § 87(2)(g)

§ 87(2)(b) PO Koumniotes stated that once § 87(2)(b) refused to tell them whether he lived in the building, he became suspicious that he did not live there. The officers were doing a vertical patrol of a NYCHA building in which only residents and their guests are allowed. According to Kamins New York Search and Seizure, an officer can forcibly stop an individual when the officer reasonably suspects the individual has committed or is committing a crime (encl. [1A]). § 87(2)(g)

Allegation B: Abuse of Authority – PO Theohari Koumniotes searched § 87(2)(b)

§ 87(2)(b) and PO Koumniotes both stated that after handcuffing § 87(2)(b) PO Koumniotes pulled § 87(2)(b)'s wallet out of his pocket and retrieved his identification. Since

§ 87(2)(b) had not previously cooperated when the officers asked if he lived in the building, the only way for PO Koumniotes to verify his residence was to retrieve his identification, and because § 87(2)(b) was handcuffed for the safety of the officers, PO Koumniotes had to do so himself. It is undisputed that the purpose of the search was to retrieve § 87(2)(b)'s identification since PO Koumniotes suspected § 87(2)(b) was trespassing and also was issuing § 87(2)(b) a summons. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C: Discourtesy – PO Theohari Koumniotes spoke rudely to § 87(2)(b)

Allegation D: Offensive Language – PO Theohari Koumniotes made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) alleged in his CCRB interview that PO Koumniotes used the word “fuck” when speaking to him and called him a “nigger” and a “black motherfucker.” § 87(2)(b) did not explain the context in which PO Koumniotes used the racial slurs, and did not initially make the § 87(2)(b) in his statement but referred to it later. § 87(2)(g)

§ 87(2)(b) even though he made two separate complaints on the date of the incident and a detailed phone statement several days after the incident. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E: Force – PO Theohari Koumniotes used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after verifying his residence, the officers brought him to another floor and PO Koumniotes pushed him twice in his chest while he stood against the wall. He alleged shoulder and back pain as a result of this and sought medical treatment. He is also suing the City § 87(2)(g)

§ 87(2)(b). Both PO Koumniotes and PO Rosa denied that PO Koumniotes pushed § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date